

MULTIMEDIA



UNIVERSITY

STUDENT ID NO

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MULTIMEDIA UNIVERSITY

FINAL EXAMINATION

TRIMESTER 2, 2018/2019

UCP4622 – CRIMINAL PROCEDURE II

(All Sections / Groups)

2 MARCH 2019

Reading Time : 9.00 a.m. – 9.15 a.m.

(15 Minutes)

Answering Time: 9.15 a.m. – 12.15 p.m.

(3 Hours)

INSTRUCTIONS TO STUDENT

1. Students will have **fifteen minutes** during which they may read the paper and make rough notes **ONLY** in their question paper. Students then have the remaining **THREE HOURS** in which to answer the questions.
2. This Question paper consists of 5 pages with 5 Questions only.
3. Attempt **ALL** questions in **PART A** and any one questions in **PART B**. All questions carry equal marks and the distribution of the marks for each question is given.
4. Students are only allowed to bring in **CLEAN AND ORIGINAL COPY** of the following statutes into the exam venue:
 - i. Criminal Procedure Code
 - ii. Penal Code“Clean” is defined to include no tagging, no annotation either by the publisher or anyone else, and no erased marking. Highlighting and underlining are also prohibited.
5. Please write all your answers in the Answer Booklet provided.

PART A: Compulsory

Instruction: Attempt **ALL** questions.

QUESTION 1

- (a) Dani was charged with 3 counts of criminal breach of trust under s 409 of the Penal Code involving RM1.6 billion of government funds. After the charges were read and explained to him, Dani claimed trial and applied for bail. The Deputy Public Prosecutor (DPP) opposed Dani's application for bail for the reason that there was the likelihood that Dani might abscond. After hearing the parties, the Sessions Court judge (SCJ) ordered that bail be granted to Dani in the sum of RM1 million in two sureties and ordered for him to surrender his international passport to the court. The SCJ also ordered Dani against contacting or disturbing witnesses in the case. The bail was duly executed and Dani was released pending trial. At the commencement of the trial, the DPP applied to the SCJ for an order that the bail granted to Dani be revoked on the ground that Dani had been harassing and intimidating the witnesses. Dani's counsel objected to the application. After hearing the parties, the SCJ ordered that Dani's bail is revoked and that Dani is committed to custody.

Based on the above —

- (i) Discuss on the validity of the order revoking the bail. (10 marks)
- (ii) Explain how Dani may be admitted to bail immediately or as soon as possible after the order revoking the bail. (5 marks)
- (b) Explain what impeachment is and its procedure. (10 marks)
- (Total: 25 marks)

Continued...

QUESTION 2

- (a) Frodo aged 40 and his nephew Gollum aged 18 were arrested for attacking Gimili, an enforcement officer with the Klang Municipal Council. They were later charged before a Magistrate on a joint charge under section 323 of the Penal Code for voluntarily causing to hurt Gimili.

Both Frodo and Gollum were not represented by counsel. Before the commencement of the court proceeding, they were told by the prosecuting officer of the case to plead guilty to the charge in order to get a lesser sentence. Frodo and Gollum pleaded guilty to the charge when it was read to them. The Magistrate immediately convicted Frodo and Gollum. Gollum was sentenced to 3 months' imprisonment. The Magistrate deferred passing sentence on Frodo at the request of the prosecuting officer in order for him to tender before the court a list of Frodo's previous convictions from the Registrar of Criminals which he has yet to receive.

When the case came up again a week later before the Magistrate for sentencing, Frodo informed the Magistrate that he wishes to withdraw his plea of guilt. The Magistrate rejected Frodo's withdrawal of the guilty plea and sentenced him to one-year imprisonment.

Both Frodo and Gollum are dissatisfied with their convictions and approach you for advice as to what they can do to have the conviction set aside.

Advise both of them.

(18 marks)

- (b) In a trial before the High Court Judge, the Deputy Public Prosecutor (DPP) shall "open his case".

Your client, Abu, is anxious to know what this procedure is about and in this regard what the DPP has to say in the open court.

Advise Abu on the procedural law, in particular, the duty of the DPP in this regard and the guiding principles for opening the prosecution's case.

(7 marks)

(Total: 25 marks)

Continued...

QUESTION 3

- (a) With reference to the development of the law on criminal procedure, write short notes on the meaning of concurrent and consecutive sentences in the sentencing process.

(5 marks)

- (b) Michael, aged 39, is a medical doctor in a government hospital in Melaka. He is married with four children aged 10, 8, 6 and 3 respectively. All the children are in school and Michael is the sole breadwinner of his family.

On 10.2.2019, Olivia, Michael's wife made a police report against her husband, Michael that she was abused and she had suffered from several injuries on her left toe, left thigh, right shoulder and sustained a bruised eye. Michael was then arrested and in his cautioned statement to the police, Michael was remorseful over the incident. Upon investigation, the police also found that Michael was positive for methamphetamine.

Michael was charged in the Magistrate Courts in Melaka for 2 offences under Section 323/326A for causing hurt by a spouse and Section 15(1)(a) of the Dangerous Drugs Act 1950 for self-administration of drugs. Michael claimed trial and the case was fixed for hearing on 1.3.2019. On the day of the hearing, Michael intends to plead guilty.

Michael now retains you to mitigate on his behalf. In the course of his instructions, Michael informs you that he is possibly suffering from Bipolar disorder, a mental illness. Michael also informs you that he has no previous convictions. Furthermore, Michael informs you that if he pleads guilty he will lose his job with the government and requested for non-custodial sentence of bond of good behaviour under s.173A of the Criminal Procedure Code.

With reference to the development of the law on criminal procedure, advise Michael on the following:

- i) his request for non- custodial sentence of bond of good behaviour under s.173A of the Criminal Procedure Code

(7 marks)

- ii) draft a plea in mitigation for Michael.

(13 marks)

(Total: 25 marks)

Continued...

PART B:

Instruction: Attempt **ONE** question only.

QUESTION 4A

- (a) Distinguish between appeal and revision.

(5 marks)

- (b) Ah Choy was convicted by the Sessions Court on the charge of cheating under s 420 of the Penal Code. Ah Choy through his counsel filed a notice of appeal but had failed to file the petition of appeal within the stipulated period. He now wishes to make an application to extend the time for filing the petition of appeal on the grounds that the failure to file the petition of appeal within the stipulated time was entirely the fault of his former counsel.

Advise Ah Choy.

(10 marks)

- (c) Mat Deris was charged in the Sessions Court with an offence under s 326 of the Penal Code for having caused grievous hurt to one Loki who at the trial had identified Mat Deris as one of the four persons who had attacked him. Mat Deris was convicted and sentenced. He appealed to the High Court against the conviction and sentence. While the appeal was pending, Mat Deris made an application to the High Court to adduce additional evidence. The basis of his application was that sometime after his conviction he was informed by one Thor, that Loki was actually assaulted by other persons. His application was dismissed by the High Court.

Examine the decision of the High Court to dismiss the application to adduce additional evidence.

(10 marks)

(Total: 25 marks)

Continued...

Or

QUESTION 4B

- (a) Kumar was charged before the Sessions Court at Klang under s 4(1) of the Sedition Act 1948. He was alleged to have uttered words in Tamil that were alleged to be seditious. A translation in Bahasa Malaysia of the actual words allegedly made by the accused persons in the Tamil language was appended to the charge with the portion which was alleged to be seditious duly underlined. At a sitting of the court, the learned Sessions Court judge (SCJ) ruled and dismissed the charge against Kumar on the sole grounds that the charge did not have appended to it the transcript of the impugned words in the Tamil language and that such omissions had caused ambiguity, thus causing an embarrassment to Kumar in the preparation of his defence to the charge. The learned SCJ thus discharged Kumar. The prosecution has filed an application to the High Court to revise the order made by the learned SCJ.

Based on the above —

- (i) Examine whether the case is a proper one for the High Court to invoke its power of revision.
(10 marks)
- (ii) Elaborate on whether the High Court when invoking its powers of revision may allow the parties to appear and address the court.
(5 marks)
- (b) Explain the decision that may be made by a judge at the hearing of an appeal.
(10 marks)

(Total: 25 marks)

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